accompanying technical support document.

Through the first two proposal options, EPA is proposing a limited approval of Chapters 129.91 through 129.95 and the associated definitions in Chapter 121 which was submitted on February 10, 1994, including the corrective revision submitted on May 3, 1994.

As noted, EPA's preliminary review of this submittal indicates that the Pennsylvania generic VOC and NOx RACT regulation submitted on February 10, 1994 and the corrective revision submitted on May 3, 1994 should be approved/disapproved in a limited fashion, under the rationale for option #1; to strengthen the Pennsylvania SIP and to allow Pennsylvania to correct the deficiencies in the RACT regulation cited above. EPA has proposed three actions and is specifically soliciting comment on these actions and the rationale provided as the basis for each of those actions. Public comments on the issues discussed in this notice or on other relevant matters will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

Under the limited approval/limited disapproval options, EPA has identified certain deficiencies which prevent granting full approval of this rule under section 110(k)(3) and Part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule(s) under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule(s) under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rule does not meet the section 182 and 184 requirements of Part D because of the noted deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of Pennsylvania's submitted Chapters 129.91 through 192.95 and associated definitions in Chapter 121 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies, and, as such, the rule does not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions as discussed above.

Except to the extent that EPA proposes to use this rulemaking as a vehicle to announce an agency policy on generic RACT submittals, nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the Pennsylvania SIP revisions, pertaining to the VOC and NO_X RACT regulations, will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 27, 1994.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 95–822 Filed 1–11–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[SD–001; FRL–5137–4]

Clean Air Act Proposed Interim Approval of Operating Permits Program; State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: EPA proposes interim approval of the Operating Permits Program submitted by the State of South Dakota for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by February 13, 1995.

ADDRESSES: Comments should be addressed to Laura Farris at the Region 8 address. Copies of the State's submittal and other supporting information used in developing this proposed rule are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency,

Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART–AP, U.S. Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 CFR part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. Based on material changes to the State's submission that consisted of regulations changes adopted by the State on November 17, 1994, EPA is extending the review period for an additional 3 months. EPA will act to approve or disapprove the submission by April 11, 1995. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim approval, if the State failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the State then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would apply sanctions as required by section 502(d)(2) of the Act, which would remain in effect until EPA determined that the State had corrected the deficiency by submitting a complete corrective program.

If, following final interim approval, EPA were to disapprove the State's complete corrective program, EPA would be required under section 502(d)(2) to apply sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a State has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a State program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for that State upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Governor of South Dakota's designee, Robert E. Roberts, Secretary of the Department of Environment and Natural Resources, submitted the State of South Dakota Title V Operating Permit Program (PROGRAM) to EPA on November 12, 1993. Amendments to the PROGRAM requested by EPA were received on January 11, 1994. EPA deemed the PROGRAM administratively and technically complete in a letter to the Governor's designee dated January 14, 1994. The PROGRAM submittal includes a legal opinion from the Attorney General of South Dakota stating that the laws of the State provide adequate legal authority to carry out all aspects of the PROGRAM, and a description of how the State intends to implement the PROGRAM. The submittal additionally contains evidence of proper adoption of the PROGRAM regulations, a permit fee demonstration and a memorandum of agreement which defines how the PROGRAM will be administered by the State and reviewed by EPA.

2. Regulations and Program Implementation

The South Dakota PROGRAM, including the operating permit regulation (Administrative Rules of South Dakota (ARSD), Article 74:36, Air Pollution Control Program), substantially meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; §§ 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; § 70.5 with respect to complete application forms (no insignificant activities were identified in the PROGRAM); § 70.7 with respect to public participation and minor permit modifications; and § 70.11 with respect to requirements for enforcement authority.

South Dakota has the authority to issue variances from requirements imposed by State law. Section 34A–1–24 of the South Dakota Codified Laws (SDCL) allows the Board of Minerals and Environment, the permitting board, discretion to grant relief from compliance with State rules and regulations governing the quality, nature, duration or extent of emissions. Succeeding sections of the SDCL specify under what circumstances a variance may be granted or denied. In its review of South Dakota's PROGRAM, EPA has previously taken the position that, in order to gain full approval for its PROGRAM, South Dakota would have to amend SDCL 34A–1–24 to make it clear that variances may not be granted to part 70 sources. EPA has reevaluated its position on this issue. Although EPA would support such an amendment to SDCL 34A–1–24, EPA has not required other states to change similar statutory variance provisions. Thus, EPA believes it would not be appropriate to require South Dakota to amend SDCL 34A–1–24 before full PROGRAM approval is granted. EPA's reasoning is as follows: EPA regards SDCL 34A–1–24 as wholly external to the PROGRAM submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. EPA has no authority to approve provisions of State law, such as the variance provision referred to, which

are inconsistent with part 70. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures.

Part 70 of the operating permit regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under § 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations. The South Dakota PROGRAM will define prompt reporting of deviations in each permit consistent with the applicable requirements.

There are certain provisions of South Dakota's operating permit regulation for which EPA feels it is appropriate to offer clarification to ensure that they are interpreted to be consistent with part 70. These are as follows: (1) The definition of ''federally enforceable'' which appears at ARSD 74:36:01:01(28) reads as follows:

> ''Federally enforceable,'' all limits and conditions that are enforceable by the administrator of EPA pursuant to federal law. These limits and conditions include those requirements developed pursuant to this article, those appearing in 40 CFR 60 and 61 (July 1, 1993), requirements within the state implementation plan and permit requirements established pursuant to this article or 40 CFR 51 Subpart I (July 1, 1993). The use of this term does not impede the Department's authority under state law to enforce these limits and conditions.

This definition could be significant for determining whether a source is subject to the part 70 PROGRAM. Thus, the second sentence of the above definition cannot and should not be read to expand on the first sentence of the definition. For example, requirements developed pursuant to ARSD Article 74:36 might be, but wouldn't necessarily be, Federally enforceable. EPA's interpretation is that the requirements delineated in the second sentence of the definition are only Federally enforceable if they are enforceable by the administrator of EPA pursuant to federal law.

(2) The second sentence of ARSD 74:36:01:08(1) reads as follows: Emissions from any oil exploration or production well and its associated equipment and emissions from any pipeline compressor or pump station may not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

To be consistent with part 70, this sentence must be read as only being applicable to a determination of whether a source is major under section 112 of the Act. This language cannot be applied when determining whether a source is major under other sections of the Act.

Comments noting deficiencies in the South Dakota PROGRAM were sent to the State in a letter dated July 8, 1994. The deficiencies were segregated into those that require corrective action prior to interim PROGRAM approval, and those that require corrective action prior to full PROGRAM approval. In a letter dated August 18, 1994, the State committed to complete the regulatory process to correct both interim and full PROGRAM approval deficiencies related to its PROGRAM regulations, and submit these changes to EPA by approximately December 15, 1994. EPA responded in a letter dated October 3, 1994 that they would review all of the State's corrective actions. However, these corrective actions would be considered a material change to the PROGRAM and the date for final interim approval would be extended. The State adopted the regulatory changes on November 17, 1994, which EPA has reviewed and has determined to be adequate to allow for interim approval.

One remaining issue noted in EPA's July 8, 1994 letter that require corrective action prior to full PROGRAM approval is as follows: The PROGRAM submittal contained an Attorney General's opinion which stated that South Dakota's criminal enforcement authorities are not equivalent to those required in part 70.11. The State's criminal enforcement statute only allows for a maximum penalty of $1,000 for failure to obtain a permit and $500 for violation of a permit condition. The State must adopt legislation consistent with § 70.11 prior to receiving full PROGRAM approval to allow for a maximum criminal fine of not less than $10,000 per day per violation for knowing violation of operating permit requirements, including making a false statement and tampering with a monitoring device.

Refer to the technical support document accompanying this rulemaking for a detailed explanation of each comment and the corrective actions required of the State.

3. Permit Fee Demonstration

The State of South Dakota established an initial fee for regulated air pollutants below the presumptive minimum set in title V, section 502 and part 70, and was required to submit a detailed permit fee demonstration as part of its PROGRAM submittal. The basis of this fee demonstration included a workload analysis, which estimated the annual cost of running the PROGRAM in fiscal year (FY) 1995 to be $438,215; a fee structure based on the estimated direct and indirect costs of the PROGRAM, the number of part 70 sources permitted, and the actual emissions for the previous year. The fees established for FY 1995 are as follows: rock crushers will be charged a flat fee of $250.00; an annual administrative fee will be assessed to all major sources (based on actual emissions of each source for one calendar year), excluding rock crushers, consisting of $100.00 for sources emitting less than 50 tons per year, $500.00 for sources emitting 50 to less than 100 tons per year, and $1,000.00 for sources emitting 100 tons per year or greater; and an air emission fee will be assessed to all major sources (excluding rock crushers) of $6.10 per ton per year based on emissions from calendar year 1992 (the State will not use the 4,000 tons per year per pollutant emissions cap allowed by Act). This fee structure will be reevaluated each year. After careful review, the State of South Dakota has determined that these fees would support the South Dakota PROGRAM costs as required by 40 CFR 70.9(a).

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or commitments for section 112 implementation South Dakota has demonstrated in its

PROGRAM submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in South Dakota's enabling legislation and in regulatory provisions defining ''applicable requirements'' and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow South Dakota to issue permits that assure compliance with all section 112 requirements. EPA is interpreting the above legal authority to mean that South Dakota is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz.

b. Implementation of 112(g) upon program approval. As a condition of approval of the part 70 PROGRAM, South Dakota is required to implement section 112(g) of the Act from the effective date of the part 70 PROGRAM. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing Federally enforceable restrictions on a source-specific basis. The EPA is proposing to approve South Dakota's combined preconstruction/operating permit program found in section 74:36:05 of the State's regulations under the authority of title V and part 70 for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. South Dakota has combined their preconstruction permitting regulations and their part 70 permitting regulations for all new part 70 sources, except those sources subject to prevention of significant deterioration (PSD) or nonattainment new source review (NSR) permitting. South Dakota will require sources subject to section 112(g) to obtain a title V permit prior to construction, thereby creating a Federally enforceable limit. EPA believes this approval is necessary so that South Dakota has a mechanism in place to establish Federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Section 112(l) provides statutory authority for approval for the use of State air programs to implement section 112(g), and title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. If South Dakota does not wish to implement section 112(g) through these authorities and can demonstrate that an alternative means of implementing section 112(g) exists, EPA may, in the final action approving South Dakota's PROGRAM, approve the alternative instead. To the extent South Dakota does not have the authority to regulate HAPs through existing State law, the State may disallow modifications during the transition period.

This approval is for an interim period only, until such time as the State is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that South Dakota, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. EPA is proposing here to limit the duration of this approval to 12 months following promulgation by EPA of section 112(g) regulations. Comment is solicited on whether 12 months is an appropriate period considering South Dakota's procedures for adoption of Federal regulations.

c. Program for straight delegation of section 112 standards. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions Subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR Part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. South Dakota has informed EPA that it intends to accept delegation of section 112 standards through incorporation by reference. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

The radionuclide national emission standard for HAPs (NESHAP) is a section 112 regulation and an applicable requirement under the State PROGRAM. Currently the State of South Dakota has no part 70 sources which emit radionuclides. However, sources which are not currently part 70 sources may be defined as major and become part 70 sources under forthcoming Federal radionuclide regulations. In that event, the State will be responsible for issuing part 70 permits to those sources.

d. Program for implementing title IV of the act. South Dakota's PROGRAM contains adequate authority to issue permits which reflect the requirements of Title IV of the Act, and commits to adopt the rules and requirements promulgated by EPA to implement an acid rain program through the title V permit.

B. Proposed Action

EPA is proposing to grant interim approval to the operating permits program submitted by the State of South Dakota on November 12, 1993. If promulgated, the State must make the following change, as discussed in detail above, to receive full PROGRAM approval: The State must adopt legislation consistent with § 70.11 prior to receiving full PROGRAM approval to allow for a maximum criminal fine of not less than $10,000 per day per violation for knowing violation of operating permit requirements, including making a false statement and tampering with a monitoring device.

Evidence of this statutory change must be submitted to EPA within 18 months of EPA's interim approval of the South Dakota PROGRAM.

Today's proposal to give interim approval to the State's part 70 PROGRAM does not extend to ''Indian Country,'' as defined in 18 U.S.C. 1151, including the following ''existing or former'' Indian reservations in the State: 1. Cheyenne River; 2. Crow Creek; 3. Flandreau; 4. Lower Brule; 5. Pine Ridge; 6. Rosebud; 7. Sisseton; 8. Standing Rock; and 9. Yankton.

The State has asserted it has jurisdiction to enforce a part 70 PROGRAM within some or all of these ''existing or former'' Indian reservations and has provided an analysis of such jurisdiction. EPA is in the process of evaluating the State's analysis and will issue a supplemental notice regarding this issue in the future. Before EPA would approve the State's part 70 PROGRAM for any portion of ''Indian Country,'' EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice. This is a complex and controversial issue, and

EPA does not wish to delay interim approval of the State's part 70 PROGRAM with respect to undisputed sources while EPA resolves this question.

In deferring final action on program approval for sources located in ''Indian Country,'' EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Instead, EPA is deferring judgment regarding this issue pending EPA's evaluation of the State's analysis.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by February 13, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 29, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–700 Filed 1–11–95; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 180

[OPP–300374; FRL–4924–9]

RIN 2070–AC18

3,5-Bis(6-Isocyanatohexyl)-2H-1,3,5-Oxadiazine-2,4,6-(3H,5H)-Trione, Polymer with Diethylenetriamine; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of 3,5-*bis*(6-isocyanatohexyl)-2*H*-1,3,5-oxadiazine-2,4,6-(3*H*,5*H*)-trione, polymer with diethylenetriamine (CAS Reg. No. 87823-33-4), when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops. Miles, Inc., requested this proposed regulation.

DATES: Written comments, identified by the document control number [OPP–300374], must be received on or before February 13, 1995.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Connie Welch, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703) 308–8470.

SUPPLEMENTARY INFORMATION: Miles, Inc., 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120–0013, submitted pesticide petition (PP) 4E4416 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of 3,5-*bis*(6-isocyanatohexyl)-2*H*-1,3,5-oxadiazine-2,4,6-(3*H*,5*H*)-trione, polymer with diethylenetriamine (CAS Reg. No. 87823–33–4), when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops under 40 CFR 180.1001(d).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol